

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NATHAN VERCELLINO,

Plaintiff,

vs.

OPTUM INSIGHT, INC., UNITED
HEALTHCARE SERVICES, INC., BOARD OF
TRUSTEES OF AMERITAS HOLDING
COMPANY HEALTH PLAN, and AMERITAS
HOLDING COMPANY HEALTH PLAN,

Defendants.

4:19-CV-3048

MEMORANDUM AND ORDER

This matter is before the Court on Defendants' Petition for Attorney's Fees and Costs.

Filing 89. The present case involves a dispute over reimbursement rights in an ERISA health plan, and the Court granted Defendants' Motion for Summary Judgment on November 4, 2020. Filing 88. In its Memorandum and Order accompanying its Judgment, the Court noted the parties sought attorneys' fees and costs, which were within the Courts' discretion under ERISA. Filing 87 at 3 n.1. The Court delayed consideration of awarding attorneys' fees, "withhold[ing] this analysis pending any properly made post-judgment motions pursuant to Federal Rule of Civil Procedure 54." Filing 87 at 3 n.1.

"A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages." Fed. R. Civ. P. 54(d)(2)(A). Absent a statute or court order providing otherwise, the motion must "be filed no later than 14 days after the entry of judgment." Fed. R. Civ. P. 54(d)(2)(B)(i). The Court pronounced its Judgment in this case on November 4, 2020. Filing 88. Defendants filed the present

motion for fees and costs 15 days later, on November 19, 2020. [Filing 89](#). Thus, the motion is untimely.

“When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). In his brief opposing Defendants’ motion for fees, filed on November 30, 2020, Vercellino argues the Court should deny the motion as untimely. [Filing 91 at 1](#). Under the Court’s local rules, Defendants had seven days in which to reply to Vercellino’s opposition brief. NECivR [7.1](#)(c)(1). Defendants have not responded, and the time for doing so has elapsed. Because Defendants’ motion for fees and costs does not comply with [Federal Rule of Civil Procedure 54](#) and they have offered no reason for their untimeliness, Defendants’ Petition for Attorney’s Fees and Costs, [Filing 89](#), is denied.

IT IS ORDERED:

1. Defendants’ Petition for Attorney’s Fees and Costs ([Filing 89](#)) is denied; and
2. A separate Judgment will be entered in accordance with this Memorandum and Order.

Dated this 9th day of December, 2020.

BY THE COURT:



Brian C. Buescher
United States District Judge